

FILED

APR 10 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY MW
DEPUTY CLERK

Marcell T. Hendrix #AC0021
Name and Prisoner/Booking Number
California Health Care Facility
Place of Confinement
7707 S. Austin Road
Mailing Address
Stockton, CA 95312
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARCELL T. HENDRIX
(Full Name of Plaintiff) Plaintiff,

v.

(1) CALIF. DEPT. OF CORR. & REHAB.
(Full Name of Defendant)

(2) _____

(3) _____

(4) _____

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. 2:22cv-1319 CKD (PC)
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☐ Original Complaint
☐ First Amended Complaint
☒ Second Amended Complaint

DEMAND FOR JURY TRIAL

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☒ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

☒ Other: Subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq)

2. Institution/city where violation occurred: _____

B. DEFENDANTS

1. Name of ~~first~~ Defendant: CAL. DEPT. OF CORR. & REHAB. The first Defendant is employed as:
STATE PRISON AGENCY at Sacramento, CA
(Position and Title) (Institution)
2. Name of ~~second~~ Defendant: _____ The second Defendant is employed as:
_____ at _____
(Position and Title) (Institution)
3. Name of ~~third~~ Defendant: _____ The third Defendant is employed as:
_____ at _____
(Position and Title) (Institution)
4. Name of ~~fourth~~ Defendant: _____ The fourth Defendant is employed as:
_____ at _____
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☒ No
2. If yes, how many lawsuits have you filed? 1. Describe the previous lawsuits:
 - a. First prior lawsuit: N/A
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ N/A v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ N/A v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131)

2. Claim I. Identify the issue involved. Check only one. State additional issues in separate claims.

- ☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☒ Threat to safety ☐ Other: (2004 ADAAG)(2010 Standards)

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

1) Plaintiff is assigned to the California Health Care Facility, (CHCF), located in Stockton, California. This institution was constructed by the California Department of Corrections and Rehabilitation, (CDCR), at the urging of the Federal Judiciary, to address the health care crisis that had come to the courts attention, most notably through the Coleman and Plata litigation, to house inmate/patients with mental disabilities and medical disabilities, construction began on the facility in the Spring of 2011.

2) Subtitle A of subtitle II of the Americans with disabilities Act of 1990 (42 U.S.C. § 12131 et seq) which prohibits discrimination on the basis of disability by public entities such as CDCR, is featured prominently in the above mentioned cases, as well as the construction of CHCF by the CDCR, under court order, which was completed in 2013.

3. Plaintiff is a qualified individual with a disability, who with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the

continued on pg. 3-A

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

The CDCR commits intentional knowing and wilfull acts and omissions against plaintiff, under color of law, a qualified individual with a disability when he is subject to an upper bunk in an ADA/Section 504 design Accessible cell, to a bunk 5 feet off the ground, far beyond the 17 to 19 inches normally preferred for this type of cell, the proximate cause of the fall injuring plnt

5. Administrative Remedies: violating his ADA protections against discrimination.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim I? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim I to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A

provision of auxiliary aids and services, he meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity, in this instance the CDCR.

4) On August 1, 2021, during the third watch, plaintiff is an inmate/patient assigned to CHCFs, Enhanced Outpatient Program, (EOP), level of psychiatric care, in the E1E housing unit, in E-Facility.

5) Plaintiff is housed in the upper bunk, in cell 1114, while attempting to mount up to the upper bunk, inmate/patient slips, missteps and falls backward to the floor with a desk beneath him breaking his fall before hitting the floor causing major pain and injury to his back and shoulder.

6) Inmate/patient is housed in an ADA/Section 504 design Accessible cell, dispersed throughout the facility, the appropriate height of the bed in these type of cells is generally 17 to 19 inches from the floor.

7) The intentional, knowing and willful addition of an upper bunk by the CDCR, is inappropriately placed and inappropriately high off of the ground in an ADA/Section 504 Design Accessible cell, under color of law, which is the proximate cause of the injury inmate/patient endures.

8) The addition of the upper bunk approximately five feet off the ground, far beyond the 17 to 19 inches generally acceptable for these types of cells, violates the Americans with Disabilities Act and Architectural Barriers Act Guidelines (2004 ADAAG) which is incorporated into the ADA standards for Accessible Design (2010 standards).

9) Public entities, such as the CDCR, shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate/patient access to safe, appropriate housing.

10) A public entity, such as the CDCR, may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity/CDCR must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities., such as plaintiff.

CLAIM II

1. State the constitutional or other federal civil right that was violated: U.S Constitutional
Eighth Amendment

2. Claim II. Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input checked="" type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: <u>Deliberate indifference standard</u> | |

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

1) Plaintiff is assigned to the California Health Care Facility, (CHCF), located in Stockton, California. This institution was constructed by the California Department of Corrections & Rehabilitation, (CDCR), at the urging of the Federal Judiciary, to address the health care crisis that had come to the courts attention, most notably through the Coleman and Plata litigation, to house inmate/patients with mental health disabilities and medical disabilities, construction began on the facility in the Spring of 2011.

2) Subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq) which prohibits discrimination on the basis of a disability by public entities such as CDCR, is featured prominently in the above mentioned cases, as well as the construction of CHCF by the CDCR, under court order, which was completed in 2013.

3) Plaintiff is a qualified individual with a disability, who with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, he meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity/CDCR.

4) On August 1, 2021, during the third watch, plaintiff is an inmate/patient assigned to CHCFs, Enhanced Outpatient Program, (EOP), level of

continued on pg. 4-A

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

The CDCR commits intentional, knowing and willfull acts and omissions against plaintiff, a qualified individual with a disability, under color of law, when he is placed in an upper bunk, in an ADA/Section 504 design Accessible cell, 5 feet off the floor, far beyond the 17 to 19 inches generally preferred, the proximate cause of the fall injuring plaintiff demonstrating deliberate indifference to plaintiffs health and safety.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim II? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim II to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

N/A

psychiatric care, in the E1E housing unit, in E-Facility.

5) Plaintiff is housed in the upper bunk, in cell #114, while attempting to mount up to the upper bunk, inmate/patient slips, missteps and falls backward to the floor with a desk beneath him breaking his fall before hitting the floor causing major pain and injury to his back and shoulder.

6) Inmate/patient is housed in an ADA/Section 504 design Accessible cell, dispersed throughout the facility, the appropriate height of the bed in these type of cells is generally 17 to 19 inches from the floor.

7) The intentional, knowing and wilful addition of an upper bunk by the CDCR, is inappropriately placed and inappropriately high off of the ground in an ADA/Section 504 Design Accessible cell, under color of law, which is the proximate cause of the injury inmate/patient endures.

8) The addition of the upper bunk approximately five feet off the ground, far beyond the 17 to 19 inches generally acceptable for these types of cells, violates the Americans with Disabilities Act and Architectural Barriers Act Guidelines (2004 ADAAG) which is incorporated into the ADA standards for Accessible Design (2010 standards).

9) Public entities, such as the CDCR, shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards so as to ensure that each inmate with a disability is housed in a cell with accessible elements necessary to afford the inmate/patient access to safe, appropriate housing.

10) A public entity, such as the CDCR, may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity/CDCR must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities, such as the plaintiff.

CLAIM III

1. State the constitutional or other federal civil right that was violated: subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq)

2. Claim III. Identify the issue involved. Check only one. State additional issues in separate claims.

- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input checked="" type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: <u>(2004 ADAAG)(2010 Standards)</u> | |

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

1) Plaintiff is assigned to the California Health Care Facility, (CHCF), located in Stockton, California. This institution was constructed by the California Department of Corrections & Rehabilitation, (CDCR), at the urging of the Federal Judiciary, to address the health care crisis that had come to the courts attention, most notably through the Coleman and Plata litigation, to house inmate/patients with mental health disabilities and medical disabilities, construction began on the facility in the Spring of 2011.

2) Subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq) which prohibits discrimination on the basis of disability by public entities such as CDCR, is featured prominently in the above mentioned cases, as well as, the construction of CHCF by the CDCR under court order, which was completed in 2013.

3) Plaintiff is a qualified individual with a disability, who with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, he meets the essential eligibility requirements for the receipt of services or the participation in programs or
continued on pg 5-A

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

The CDCR commits intentional, knowing and willful acts and omissions against plaintiff, a qualified individual with a disability, under color of law, when he is placed in a cell that does not have an implement to shut the door safely from inside the cell, the proximate cause of injury he sustains on August 15, 2021, violating his ADA protections against discrimination due to his disability.

5. Administrative Remedies.
- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
 - Did you submit a request for administrative relief on Claim III? ☒ Yes ☐ No
 - Did you appeal your request for relief on Claim III to the highest level? ☒ Yes ☐ No
 - If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

N/A

If you assert more than three Claims, answer the questions listed above for each additional Claim on a separate page.

activities provided by the public entity/CDCR.

4) On August 15, 2021, during the second watch/third watch shift change, approximately 1:30/1:40 p.m., inmate/patient is housed in cell #222, in the E1E housing unit, in the Enhanced Outpatient Program, (EOP), in the E-Facility at CHCF, when, while attempting to close the door to his cell, plaintiff injures his fingers.

5) The doors throughout the E1-E-Facility, EOP housing units B through E, do not have a door knob or any indentation on the inside of the door to shut the door safely from inside the cell.

6) The inmate/patient must place his hand at the edge of the door, then swing the door shut, hoping that he can remove his hand from between the closing door and the door jamb, without injuring himself should he not move his hand quick enough performing this maneuver.

7) Plaintiff alleges that the CDCRs intentional, knowing and wilfull omission of providing an aid or implement, door knob, indentation or the like , for inmate/patients to safely shut their door, without being subject to possible injury, under color of law, is the proximate cause of the injury he sustains on August 15, 2021, violating the Americans with Disabilities Act and Architectural Barriers Act Guidelines (2004 ADAAG), which is incorporated into the ADA Standards for Accessible Design (2010 Standards)

8) Public entities, such as the CDCR, shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards so as to ensure that each inmate with a disability is housed in a cell with accessible elements necessary to afford the inmate/patient access to safe, appropriate housing.

9) A public entity, such as the CDCR, may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity/CDCR must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities, such as the plaintiff.

CLAIM ~~III~~ IV

1. State the constitutional or other federal civil right that was violated: U.S. CONSTITUTIONAL EIGHTH AMENDMENT

IV

2. Claim ~~III~~. Identify the issue involved. Check only one. State additional issues in separate claims.

- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input checked="" type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>Deliberate Indifference</u> | |

IV

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim ~~III~~. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

!) Plaintiff is assigned to the California Health Care Facility, (CHCF), located in Stockton, California. This institution was constructed by the California Department of Corrections & Rehabilitation, (CDCR), at the urging of the Federal Judiciary, to address the health care crisis that had come to the courts attention, most notably through the Coleman and Plata litigation, to house inmate/patients with mental health disabilities and medical disabilities, construction began on the facility in the Spring of 2011.

2) Subtitle A of subtitle II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq) which prohibits discrimination on the basis of disability by public entities such as CDCR, is featured prominently in the above mentioned cases, as well as, the construction of CHCF by the CDCR, under court order, which was completed in 2013.

3) Plaintiff is a qualified individual with a disability, who with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, he meets the essential eligibility requirements for the receipt of services or the participation in programs or

continued on pg 6-A

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

~~The CDCR commits intentional, knowing and wilfull acts and omissions against plaintiff, a qualified individual with a disability, under color of law when he is placed in a cell that does not have an implement to shut the door safely from inside the cell, the proximate cause of injury he endures on August 15, 2021, violating his U.S. Constitutional Eighth Amendment guarantees under the Deliberate Indifference standard.~~

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? IV ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim ~~III~~? IV ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim ~~III~~ to the highest level? IV ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A

N/A

If you assert more than three Claims, answer the questions listed above for each additional Claim on a separate page.

activities provided by the public entity/CDCR.

4) On August 15, 2021, during the second watch/third watch shift change, approximately 1:30/1:40 p.m., inmate/patient is housed in cell #222, in the E1E housing unit, in the Enhanced Outpatient Program, (EOP), in the E-Facility at CHCF, when, while attempting to close the door to his cell, plaintiff injures his fingers.

5) The doors throughout the E1-E-Facility, ~~at EOP housing unit B~~ through E, do not have a door knob or any indentation on the inside of the door to shut the door safely from inside the cell.

6) The inmate/patient must place his hand at the edge of the door, then swing the door shut, hoping that he can remove his hand from between the closing door and the door jamb, without injuring himself should he not move his hand quick enough performing this maneuver.

7) Plaintiff alleges that the CDCRs intentional, knowing and wilfull omission of providing an aid or implement, door knob, indentation or the like, for inmate/patients to safely shut their door, without being subject to possible injury, under color of law, is the proximate cause of the injury he sustains on August 15, 2021, violating the Americans with Disabilities Act and Architectural Barriers Act Guidelines (2004 ADAAG), (2010 Standards).

8) Public entities, such as the CDCR, shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards so as to ensure that each inmate with a disability is housed in a cell with accessible elements necessary to afford the inmate access to safe, appropriate housing.

9) A public entity, such as the CDCR, shall implement reasonable requirements necessary for the safe operation of its services, programs, or activities. However, the public entity/CDCR must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities, such as the plaintiff.

E. REQUEST FOR RELIEF

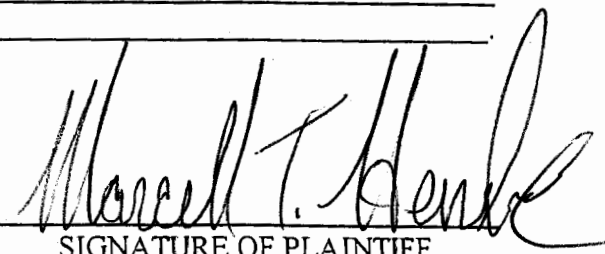
State the relief you are seeking:

- ~~1. Compensatory damages against defendant in the amount of \$50,00.00~~
- ~~2. Punitive damages against defendant in the amount of \$20,00.00.~~
- ~~3. For costs and reasonable attorneys fees~~
- ~~4. Defendant is sued in official capacity~~
- ~~5. For such further relief as the court deems proper.~~

JURY DEMAND

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-6-2023
DATE


SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space you may attach more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

PROOF OF SERVICE BY MAIL
[CCP §§ 1013(a), 2015.5]

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

I am a citizen of the County of SAN JOAQUIN, State of California. I am a citizen of the United States of America. I am over the age of eighteen (18) and not a party to this action. I am a resident of the County of San Joaquin, CDCR# AG0021

My address is: 7707 S. Austin Road

California Health Care Facility
P.O.BOX 213040; E1E-#222
Stockton, Ca 95213

On April 6, 2023, 20 , I served via United States Mail a copy of the following document(s):
SECOND AMENDED COMPLAINT

The above-noted legal document(s) was placed in a sealed envelope, with postage thereon fully prepaid, addressed to the person at the address indicated below pursuant to California Code of Civil Procedure Section 1013. I placed the envelope or package in a mailbox or other like facility addressed to:

HONORABLE CAROLYN K. DELANEY
UNITED STATES COURTS
OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION
501 I St., Ste. 4-200
SACRAMENTO, CA 95814-2322

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This document was executed on April 6, 2023 in San Joaquin County, California.

Marcell T. Hendrix
Type or Print Name


Signature

MARCELL T. HENDERIX[#] A00021
(CHCF) Facility E, EIE-2221
P.O. Box 213040
Stockton, CA. 95213